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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,821	11/09/2001	Simpey Kuramoto	4646.000026	6562

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/037,821	Applicant(s) KURAMOTO ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

It is noted that on the IDS statement containing the U.S. references, the application number is wrong. Clarification is needed.

Claim Rejections - 35 USC § 112

Claim 30 recites the limitation "the ready to eat cereal product" in line (c). There is insufficient antecedent basis for this limitation in the claim. In line "a" only a cereal product is referred to.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4, 5, 6, 7, 9, 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Cheerios (Recipes from Heart Healthy).

Cheerios discloses a composition containing milk, cereal (RTE) and sugar as in claims 1, 4, 5, 6, 7, and 9. The composition is considered to contain homogenized blend of cereal product particulates and milk, because the ingredients are blended in a blender, which would have broken up the cereal pieces into particulates and also homogenized the mixture. The composition is considered to be stable as it contains the claimed ingredients of claim 1 and is at least fat reduced because it includes skim milk

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as in claim 6. Cheerios are a toasted product as in claims 7 and 15, and insoluble in the liquid carrier as in claim 9.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dulebohn et al. (WO 00/47063).

Dulebohn et al. disclose a composition containing milk, juice and polysaccharides or stabilizers such as xanthan, carrageenan, alginate or pectin, and cereal such as rice cereal which is pasteurized as in claims 1, 2, 3, 4, 8, 10, 11, 12, 16 (page 4, lines 5-12, lines 20-26, page 5, lines 5-10). The mixture is seen to have been homogenized as it is stirred in a blender as in claim 5 and is seen to be stable as it contains the claimed ingredients (page 7, lines 1-5). The particles can be insoluble in the liquid carrier because they are raw as in claims 9 and 17 (page 7, lines 1-2). Sugar can be added as in claim 13 and the flavors of juices are considered to be natural flavors as in claim 14 (page 10, lines 9-16). The mixture can contain reduced fat milk as in claim 6 and (page 10, line 10). Honey-nut oat cereal is a toasted cereal as in claims 7 and 15 (page 10, line 12). The amount of cereal can be from 3-30% by weight as in claim 19 (page 2, lines 8-18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 –35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheerios or Dulebohn et al. or Dulebohn et al. (WO 47063) in view of Cheerios.

Claim 18 further requires that the composition is in a single serving container. Cheerios discloses a recipe that has 1 cup of skim milk, which is equal to 8 oz, which is generally considered to be a standard serving size. Therefore, it would have been obvious to make a composition in a single serving size.

The limitations of claim 20 have been disclosed above except for the use of a container with an operable closure mechanism. However, beverages in cans with openings are extremely well known, as in any milk container. Therefore, it would have been obvious to use a container with a closure mechanism for the claimed composition.

Claim 21 requires that the stabilizer is microcrystalline cellulose. Dulebohn et al. disclose the use of other stabilizers as above. Nothing new is seen in the use of MCC absent any new or unobvious results. Therefore, it would have been obvious to use known stabilizers in the claimed composition.

The limitations of claims 22-23, 26-29 have been discussed above and are obvious for those reasons.

Claim 24 further requires the use of a single serving size and claim 25 one that has multiple servings. Both are very well known as in single serving milk or juice cartons, or multiple serving ones. Therefore, it would have been obvious to use known serving containers for the claimed composition.

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Claim 30 is to the method. Deleon discloses blending SUCRELESSE with milk and then adding juice, and then adding the rice cereal which has had the size reduced on a 80 mesh screen. Even though SUCRELESS is not a polysaccharide, but a protein stabilizer, (page 4, lines 19-26), none of the examples use the polysaccharides stabilizers such as xanthan or carrageenan, but use the SUCRELESSE as the stabilizer. It is seen that the polysaccharides of the reference could be substituted for the SUCRELESSE because they perform the same function of stabilizing the mixture and either is disclosed as being a stabilizer (page 4, lines 5-12, lines 20-26). Blending in a Blend Master is considered to comparable to homogenization as the ingredients are blended (page 10, lines 9-20). Therefore, it would have been obvious to use other stabilizers such as xanthan or carrageenan in place of SUCRELESSE because they are cited as stabilizers also.

Nothing new is seen in toasting the cereal product before the combining step because Cheerios is a known toasted product as in claim 31 or pasteurizing in claim 32. Pasteurizing is seen on page 10, lines 18-21. Therefore, it would have been obvious to toast before combining and to pasteurize the product in the process of the combined references.

Claim 33 is to a food product mix. The particulated toast cereal product has been shown above in combination with a food stabilizer and a sweetener as in claim 34. Dulebohn et al. disclose that sieve screens can be between 60 to 150 mesh which is 250 microns to 106 microns i. e. a 140 mesh screen. Certainly, a 150 mesh screen would have been about 100 microns. Nothing new is seen as in claim 35 in the use of a

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dehydrated milk product if one wanted to make a dry mix as non-fat dry milk is commonly substituted for liquid milk. Therefore, it would have been obvious to use a toasted cereal as disclosed by Cheerios for the cereals of Deleon et al. and to use known ingredients in the claimed micron size as disclosed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 9-30-03


HELEN PRATT
PRIMARY EXAMINER